

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE ELEVENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 130 of 2004

Between:

1. M/s.K.Jayapal Rao Jewellers rep., by its Proprietor K.Jayapal Rao, S/o K.Pandurangam, aged about 47 yrs.,
at 15-6-16, Siddiamber Bazar, Hyderabad.
2. M/s.Jeevandas Lochandas rep., by its Proprietor Mr.Bansilal, S/o Jeevandas, at
15-6-15, Siddiamber Bazar, Hyderabad.
3. M/s.Puppala Laxmaiah GariNarsing Rao Jewellers rep.,by Sri P.Shravan Kumar,
s/o late P.Narsing Rao at 15-6-11, Siddiamber Bazar, Hyderabad.

..... PETITIONERS.

AND

1. The Union of India, rep., by its Secretary, Ministry of Finance (Bank Division),
Jeevandeep Building, Sansad Marg, New Delhi.
2. State Bank of India, Having Branch at Saifabad, HACA Bhavan, Adjacent to All
India Radio, Hyderabad rep., by
its Authorised Officer & Asst.General Manager.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or writs, order or direction more in the nature of a Writ of Mandamus declaring the action of the 2nd respondent Bank under the Impugned Notices dt.01-11-2003 directing the petitioner concerns 1 to 3 vacate their respective Shop Premises forming part of the secured asset without following the due process of law

as contained in the A.P.Buildings (L.R.& E) Control Act, 1960 which covers the statutory tenancy of the petitioner concerns in respect of the Shop Premises occupied by them as without authority of law, while holding that the enactment of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and more particularly sections 13 to 19 & Sections 34 & 35 thereof as unconstitutional being self contradictory, arbitrary, unreasonable, being without legislative competence and effacing the legislative function, infringing the Fundamental and Constitutional rights as contained in Articles 14, 19(1)(g), 21 and 300-A of the Constitution of India and the Statutory Right of the petitioners under the A.P.Buildings (L.R. & E) Control Act, 1960 and negating the right of judicial remedy and judicial review offending the Basic Structure of Constitution of India.

For the Petitioner: Mr.PRAVEEN VYAPARI, Advocate

For the Respondent No.1: Mr.A.Rajasekhar Reddy,

Standing Counsel for Central Government.

For the Respondent No.2: Smt. P.Bala Rani.

Standing Counsel for S.B.I.

The Court made the following :

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ORAL ORDER:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

So far as the challenge to the constitutional validity of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is concerned, its validity has been upheld by the decision of the Supreme Court, and, for that reason, there will be no purpose in retaining the Writ Petition on record. Writ Petition has been filed by the tenants in occupation of the property, which, admittedly, has been mortgaged by the owner of the land to the bank. Bank is at liberty to proceed against the property in question even by resorting to taking possession of the same, but, in the garb of taking possession, petitioners shall not be dispossessed and the possession would be only symbolic. However, the bank will be entitled to the rents from the tenants. Accordingly, we dispose of the Writ Petition with liberty to the Bank to proceed in accordance with the provisions of the Act, which were under challenge, but will not dispossess the tenants otherwise than by due process of law.

The Writ Petition stands disposed of. No costs.

DEVINDER GUPTA, C.J.

11.8.2004.

VR _____

C.V.RAMULU, J.

To

1. The Secretary, Union of India, Ministry of Finance (Bank Division), Jeevandeep Building, Sansad Marg, New Delhi.
2. The Authorised Officer & Asst.General Manager, State Bank of India, Branch at Saifabad, HACA Bhavan, Adjacent to All India Radio, Hyderabad.
3. Two CD copies.